

C O P Y

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CONCORD, N.H.

Honorable Sherman Adams
Governor of New Hampshire
Concord, New Hampshire

Dear Governor Adams:

You have inquired as to what form of legislation would be legally effective to forgive F. Gordon Kimball for the judgment obtained by the state in State v. F. Gordon Kimball, Treasurer.

It is my opinion that valid action must be in the form of an act or a joint resolution, either one of which requires the signature of the Governor before it becomes law. N.H. Const. Part Second, Art. 44, 45. Although a concurrent resolution might be effective to bind the Legislature as to its own funds, rules or procedure, etc., it would not be a valid enactment which would be binding upon another branch of the state government, such as the executive or the judicial branches. 4 Hinds, Precedents of the House of Representatives, ss. 3483, 3484. In order to be binding upon another branch of the government, it must be the law of the land, that is, it must pass both houses of the Legislature, and be approved by the Governor. In the present case we have a judgment of the courts, obtained by the executive branch of the government, which the executive, unless prevented by valid action of the Legislature, may enforce. Such prohibition therefore, must be either an act or resolve passed by separate action by each houses of the Legislature, and signed by the Governor in the manner provided by the Constitution. Opinion of the Justices, Re: Reorganization (1950). Cooley, Constitutional Limitations (7th Ed.) 186.

You have also inquired if the Legislature forgave the amount of the judgment, would the surety be relieved of all liability under the performance bond. My answer is "yes". Release of the principal generally releases the surety. Judge of Probate v. Gammier, 83 N.H. 195 (1936).

Honorable Sherman Adams — 2.

You have also inquired what would be the legal effect if the Legislature forgave the portion of the judgment which exceeds the amount of the bonds. While generally a surety's liability would continue to the extent of the bonds, since the question has never before been squarely decided by our New Hampshire Court, forgiveness of a part of this judgment may be detrimental to the interests of the state in seeking satisfaction against the surety. 4 Williston, Contracts, s. 1220.

Respectfully,

Gordon M. Tiffany
Attorney General

GMT/d